

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CURTIS N. BEITO, a single person,
Plaintiff,

v.

CITY OF AIRWAY HEIGHTS; CHIEF OF
POLICE LEE BENNETT; AIRWAY
HEIGHTS POLICE OFFICER PAUL
BRASCH and JANE DOE BRASCH, and
the marital community comprised
thereof; and AIRWAY HEIGHTS
POLICE OFFICER ROBERT SCHMITTER
and JANE DOE SCHMITTER, and the
marital community comprised
thereof,
Defendants.

No. CV-10-0432-EFS

**ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT, DISCHARGING
GUARDIAN AD LITEM, AND CLOSING
FILE**

I. INTRODUCTION

This matter comes before the Court on Defendants City of Airway Heights, Chief of Police Lee Bennett, Officer Paul Brasch and his spouse Jane Doe Brasch, and Officer Robert Schmitter and his spouse Jane Doe Schmitter's (collectively, "Defendants") Motion for Summary Judgment Dismissal, ECF No. 18. Defendants ask the Court to grant summary judgment and dismiss Plaintiff Curtis Beito's Complaint on several grounds, including the fact that the Complaint was filed after the statute of limitations had expired. Plaintiff opposes the motion. Having reviewed the pleadings and the record in this matter, the Court

1 is fully informed. For the reasons set forth below, the Court grants
2 Defendants' motion for summary judgment and dismisses this action.

3 **II. BACKGROUND¹**

4 On September 26, 2006, Plaintiff was stopped, detained, and
5 questioned by Airway Heights police officers, Defendants Brasch and
6 Schmitter. When Plaintiff provided his name and date of birth in
7 response to questioning, the officers discovered Plaintiff had an
8 outstanding warrant for his arrest. During a search incident to
9 arrest, the officers found a stolen credit card in Plaintiff's
10 possession. Plaintiff was subsequently charged with second degree
11 possession of stolen property.

12 Plaintiff subsequently moved for dismissal of the charge on the
13 basis that his initial contact with Officers Brasch and Schmitter was
14 unconstitutional. The trial court granted Plaintiff's motion and
15 dismissed the charge, and the State appealed. In a published
16 decision, the Washington Court of Appeals affirmed. *See State v.*
17 *Beito*, 147 Wn. App. 504 (Div. III 2008).

18 Plaintiff subsequently filed the instant civil Complaint in
19 Spokane County Superior Court on November 12, 2010. ECF No. 1-2. In
20 the Complaint, Plaintiff alleges that Defendants violated his
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22 ¹ In ruling on the motion for summary judgment, the Court has
23 considered the facts and all reasonable inferences therefrom as
24 contained in the submitted affidavits, declarations, exhibits,
25 and depositions, in the light most favorable to the party
26 opposing the motion - here, the Plaintiff. *See Leslie v. Grupo*
ICA, 198 F.3d 1152, 1158 (9th Cir. 1999).

1 constitutional rights, and he seeks damages pursuant to 42 U.S.C. §
2 1983. The Complaint also asserts several state-law claims, including
3 negligence, negligent infliction of emotional distress, outrage, and
4 negligent supervision and training. Defendants timely removed the
5 action to this Court on December 10, 2010. ECF No. 1. A telephonic
6 scheduling conference was held on August 11, 2011, ECF No. 8, and the
7 Court entered a Scheduling Order shortly thereafter, ECF No. 9.

8 On June 15, 2012, Defendants filed the instant motion for
9 summary judgment. ECF No. 18. On August 1, 2012, the Court held a
10 telephonic hearing regarding several other pending motions to appoint
11 counsel filed *pro se* by Plaintiff, as well as his counsel's motion to
12 withdraw. The Court denied these motions and stayed the pending
13 summary-judgment motion until issues surrounding Plaintiff's
14 competency could be adequately addressed. ECF No. 40. On March 7,
15 2013, with the consent of Plaintiff, the Court appointed his daughter,
16 Debra Marie Granado, to act as his guardian ad litem in this matter.
17 ECF No. 62. The Court also unstayed Defendants' summary-judgment
18 motion and directed the parties to resume briefing. *Id.*

19 **III. LEGAL STANDARD**

20 Summary judgment is appropriate if the "pleadings, the discovery
21 and disclosure materials on file, and any affidavits show that there
22 is no genuine issue as to any material fact and that the moving party
23 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).
24 Once a party has moved for summary judgment, the opposing party must
25 point to specific facts establishing that there is a genuine issue for
26 trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If the

1 nonmoving party fails to make such a showing for any of the elements
2 essential to its case for which it bears the burden of proof, the
3 trial court must grant the summary-judgment motion. *Id.* at 322.
4 "When the moving party has carried its burden under Rule 56(c), its
5 opponent must do more than simply show that there is some metaphysical
6 doubt as to the material facts. . . . [T]he nonmoving party must come
7 forward with 'specific facts showing that there is a genuine issue for
8 trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
9 574, 586-87 (1986) (internal citation omitted) (emphasis in original).

10 When considering a motion for summary judgment, the Court does
11 not weigh the evidence or assess credibility; instead, "the evidence
12 of the non-movant is to be believed, and all justifiable inferences
13 are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477
14 U.S.242, 255 (1986).

15 IV. DISCUSSION

16 Defendants argue that this suit must be dismissed because the
17 Complaint was filed after the statute of limitations for Plaintiff's
18 claims had expired.² Defendants argue that the date of accrual for
19 Plaintiff's claims is the date of his arrest: September 26, 2006.

20
21 ² Defendants also raise several other substantive grounds
22 supporting their motion for summary judgment, including
23 qualified immunity and a lack of evidence supporting Plaintiff's
24 state-law claims. However, because the Court concludes that all
25 of Plaintiff's claims are procedurally barred by the statute of
26 limitations, the Court finds no need to address these other
substantive grounds for summary judgment raised by Defendants.

1 Defendants also contend that Washington's three-year statute of
2 limitations for personal-injury claims applies to all of the claims
3 alleged in the complaint. See RCW 4.16.080(2) (applying three-year
4 limitations period to all personal-injury actions); *Rose v. Rinaldi*,
5 654 F.2d 546, 547 (9th Cir. 1981) (applying the previously-cited
6 statute to § 1983 actions for claims arising in Washington).
7 Plaintiff does not contest either of Defendants' assertions; instead,
8 Plaintiff argues that the statute of limitations was tolled at various
9 times due to a) Plaintiff's disability, and b) Plaintiff's
10 imprisonment for several months on the stolen-property criminal
11 charge.

12 First, the Court addresses several questions related to the
13 admissibility of exhibits submitted by Plaintiff in opposition to the
14 instant summary-judgment motion. Next, the Court discusses whether
15 the statute of limitations was tolled while Plaintiff was imprisoned
16 on the stolen-property criminal charge. Finally, the Court addresses
17 Plaintiff's contentions that the statute of limitations was tolled
18 during the period of time when he was disabled. For the reasons set
19 forth below, the Court finds that the statute of limitations was not
20 sufficiently tolled to account for the delay in the filing of
21 Plaintiff's Complaint, and that accordingly, Plaintiff's claims are
22 time-barred.

23 1. Admissibility of Exhibits Proffered by Plaintiff

24 As a threshold matter, Defendants object to several exhibits
25 proffered by Plaintiff in opposition to Defendants' summary-judgment
26 motion. Defendants first ask the Court to strike Exhibit 4, an

1 affidavit by Plaintiff himself in which he states that he has been
2 "under a period of disability . . . [since] July 16, 2007." ECF No.
3 65. Setting aside the unsubstantiated and self-serving nature of this
4 assertion – not to mention that the affidavit does not support the
5 inference that Plaintiff is qualified to diagnose and assess the
6 particular disability at issue – Plaintiff has not established that he
7 is *presently* competent to attest to this fact by affidavit. "An
8 affidavit or declaration used to support or oppose a motion [for
9 summary judgment] must be made on personal knowledge, set out facts
10 that would be admissible in evidence, and **show that the affiant or**
11 **declarant is competent to testify on the matters stated.**" Fed. R.
12 Civ. P. 56(c)(4). Given that the Court has previously appointed a
13 guardian ad litem to represent Plaintiff in this matter, see ECF No.
14 62, Plaintiff's affidavit does not show that Plaintiff is competent to
15 testify on the matters contained in his affidavit. Accordingly,
16 Defendants' motion to strike Exhibit 4 is granted.

17 Defendants further ask the Court to strike Exhibit 1 because no
18 medical physician has offered a medical opinion as to Plaintiff's
19 competence on a more-probable-than-not basis; Defendants also seek to
20 strike Exhibit 2 because it consists of hearsay and is irrelevant.
21 Although the admissibility of these exhibits is questionable, the
22 Court finds it unnecessary to strike them. Even if the Court were to
23 deem them credible and accept them at face value, they do not
24 establish a sufficiently lengthy period of tolling to overcome the
25 statute of limitations. Accordingly, the Court denies as moot
26 Defendants' motion to strike Exhibits 1 and 2.

1 2. Burden of Proof to Demonstrate Compliance with the Statute
2 of Limitations

3 The statute of limitations is an affirmative defense; thus, a
4 defendant relying on the statute carries the initial burden of proof
5 to show that the statute bars plaintiff's claims. See *Rivas v.*
6 *Overlake Hosp. Med. Cent.*, 164 Wn.2d 261, 267 (2008). But once a
7 defendant has shown that claims are time-barred, "[a] plaintiff . . .
8 carries the burden of proof if he or she alleges that the statute was
9 tolled and does not bar the claim." *Id.* (citing *Cannavina v. Poston*,
10 13 Wn.2d 182, 190-91 (1942)).

11 Here, it is apparent that Plaintiff filed his suit after the
12 statute of limitations had facially expired. Plaintiff's claims
13 accrued on September 26, 2006, the date of his arrest; therefore, to
14 comply with the statute of limitations, Plaintiff was required to file
15 his Complaint by no later than September 25, 2009. He instead filed
16 it on November 12, 2010, 413 days later. See ECF No. 1-2. Plaintiff
17 thus carries the burden to demonstrate that the statute of limitations
18 was tolled for at least 413 days to justify the untimely filing of his
19 Complaint.

20 3. Tolling Based on Imprisonment for a Pending Criminal Charge

21 Plaintiff first alleges that the statute of limitations was
22 tolled during the period he was in custody awaiting trial on the
23 underlying stolen-property criminal charge. The affidavit of Lynnette
24 Brown, proffered by Defendants, indicates that Plaintiff was in
25 custody on that charge from September 27, 2006, to October 2, 2006,
26 and again from February 1, 2007, until his ultimate release on July

16, 2007.³ ECF No. 20, at 2-3. The total period of time Plaintiff was imprisoned on this criminal charge is therefore 172 days.

Under Washington law, the statute of limitations is tolled if the party asserting the claim is imprisoned on a criminal charge at the time the cause of action accrues:

Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter . . . be at the time the cause of action accrued . . . ***imprisoned on a criminal charge prior to sentencing***, the time of such disability shall not be a part of the time limited for the commencement of action.

RCW 4.16.190(1) (emphasis added).

Neither party disputes that the statute of limitations should be tolled for the period of time Plaintiff spent in custody awaiting trial. Accordingly, the Court deems the statute tolled for 172 of the 413 required days, resulting in a remaining deficit of 241 days.

4. Tolling Based on Plaintiff's Disability

Plaintiff also contends that he suffers from a disability that tolled the statute of limitations. Under Washington law, the period

³ Defendants suggest in their memorandum that the date of Plaintiff's release was July 7, 2007. See ECF No. 19, at 4. Plaintiff also relies on the July 7 date in his memorandum. See ECF No. 64, at 5. However, Ms. Brown's declaration states that Plaintiff was in custody until July 16, 2007. See ECF No. 20, at 2-3. In light of this discrepancy, the Court construes the facts in a light most favorable to Plaintiff and uses the July 16, 2007 date for the purpose of calculating the time during which the statute of limitations was tolled.

1 of time during which a plaintiff is disabled will also toll the
2 statute of limitations:

3 Unless otherwise provided in this section, if a person
4 entitled to bring an action mentioned in this chapter . . .
5 be at the time the cause of action accrued . . .
6 **incompetent or disabled to such a degree that he or she**
7 **cannot understand the nature of the proceedings, such**
8 **incompetency or disability as determined according to**
9 **chapter 11.88 RCW . . . the time of such disability shall**
10 **not be a part of the time limited for the commencement of**
11 **action.**

12 RCW 4.16.190(1). However, Washington law specifically provides that
13 for statute of limitations purposes, "[n]o person shall avail himself
14 or herself of a disability unless it existed when his or her right of
15 action accrued." RCW 4.16.250.

16 There are several flaws in Plaintiff's assertions regarding
17 disability-related tolling. First, Plaintiff failed to show that his
18 disability was to "such a degree that he [could not] understand the
19 nature of the proceedings." RCW 4.16.190(1). Plaintiff does not cite
20 to any provision of RCW chapter 11.88, nor does he offer any medical
21 opinion that he could not understand the nature of this civil lawsuit
22 or of the criminal charges pending against him.

23 Second, there is independent evidence that Plaintiff actually
24 was competent at the time his claims accrued. At no point did he, his
25 attorney in the criminal matter, or the Spokane County Superior Court
26 raise the issue of his competency to stand trial on the stolen-
property charge. No competency hearing was ever apparently held. The
fact that Plaintiff's competency was never raised in the criminal
action that arose from his arrest is plausible evidence that Plaintiff
was competent at the time. And in the absence of any evidence to the

1 contrary, Plaintiff failed to meet his burden of showing that he was
2 incompetent at date his claim accrued. As cited above, Washington law
3 does not permit Plaintiff to avail himself of a later-developed
4 disability to toll the statute of limitations.

5 Third, even assuming that Plaintiff's disability was present at
6 the time his claims accrued and that it otherwise satisfied the
7 requirements of RCW chapter 11.88 and RCW 4.16.190(1), Plaintiff
8 failed to demonstrate that his disability tolled the limitations
9 period for a sufficient period of time. Even assuming that each of
10 Defendants' proffered exhibits sufficiently established his disability
11 during the time period cited within those exhibits, those periods of
12 time do not add up to the required 241 days. Exhibit 1 would only
13 establish a period of disability from July 20, 2007, to August 8,
14 2007, a period of 20 days. Exhibit 2 would only establish periods of
15 disability between January 14, 2008, to February 1, 2008 – a period of
16 19 days – and from April 12, 2010, to May 18, 2010 – a period of 37
17 days, for a total of 56 days. Thus, the maximum possible period
18 during which the statute would have been tolled for Plaintiff's
19 disability is 76 days, well short of the required 241 days.

20 Finally, despite Plaintiff's argument to the contrary, the Court
21 cannot simply infer with no supporting evidence that Plaintiff was
22 sufficiently disabled between 2008 and 2010 to toll the statute of
23 limitations during that lengthy period. Nor can the Court conclude
24 that it is "more likely than not," ECF No. 64, at 6, that Plaintiff
25 was suffering from a disability far in excess of the very limited time
26 period that could be established by institutional records. The

1 institutional records themselves do not provide support for this "more
2 likely than not" contention, and Plaintiff proffered no medical
3 opinion suggesting that his disability continued to affect him outside
4 of his periods of treatment and that during that entire time, he was
5 unable to understand the nature of these proceedings.

6 In sum, Plaintiff failed to satisfy his burden of demonstrating
7 that the statute of limitations was sufficiently tolled due to his
8 disability.

9 **V. CONCLUSION**

10 Plaintiff's suit is untimely. Because it was not filed until
11 more than four years after the date his claims accrued, it does not
12 comply with Washington's three-year statute of limitations for
13 personal injury actions. Moreover, Plaintiff failed to demonstrate
14 that the limitations period was sufficiently tolled by reason of
15 imprisonment and disability to account for his delay in commencing
16 this suit. Therefore, summary judgment in Defendants' favor is
17 warranted, and this suit must be dismissed.

18 Accordingly, **IT IS HEREBY ORDERED:**

19 1. Defendant's Motion for Summary Judgment Dismissal, **ECF No.**
20 **18**, is **GRANTED**.

21 2. Plaintiff's Complaint, **ECF No. 1-2**, is **DISMISSED WITH**
22 **PREJUDICE**.

23 3. Debra Marie Granado is discharged and relieved of all
24 further responsibility to act as Plaintiff's guardian ad
25 litem in this action pursuant to the Court's Order of
26 Appointment, ECF No. 62. The Court expresses its gratitude

1 to Ms. Granado for her unremunerated service in this
2 matter.

3 4. Plaintiff's counsel is **DIRECTED** to serve Ms. Granado with a
4 copy of this Order.

5 5. The Clerk's Office is directed to **ENTER JUDGMENT** in favor
6 of all Defendants and to **CLOSE** this file.

7 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
8 Order and provide copies to all counsel.

9 **DATED** this 23rd day of May 2013.

10 s/ Edward F. Shea

11 EDWARD F. SHEA

12 Senior United States District Judge
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